



THE ANCIENT MONUMENTS AND ARCHAEOLOGICAL SITES AND REMAINS (AMENDMENT AND VALIDATION) ACT, 2010 VIS-A-VIS PROPRIETARY RIGHTS OF INDIGENOUS PEOPLE UNDER SPECIAL PROVISIONS OF THE CONSTITUTION OF INDIA: A CASE OF NORTHEAST INDIA WITH SPECIAL REFERENCE TO NAGALAND

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INTRODUCTION:

The enactment of the Ancient Monuments and Archaeological Sites and Remains Act, 1955 had formulated legal base to protect the monuments/sites declared as of National importance in the country. And in order to give more legal strength, provisions have been instituted/substituted in amendment bill and notified in the Gazette of India in Part II-Section 1, No.13; Dated March 30, 2010 as Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010. Out of 3679 National monuments/sites as per the record of the Archaeological Survey, Government of India, namely Andhra Pradesh 137, Himachal Pradesh 40, Orissa 78, Jammu & Kashmir 69, Pondicherry 7, Jharkhand 12, Punjab 33, Bihar 70, Karnataka (a) Bangalore Circle 207 (b) Dharwad Circle 299, Rajasthan 163, Chhattisgarh 47, Kerala 26, Sikkim 3, Daman & Diu 12, Madhya Pradesh 292, Tamil Nadu 403, List of monuments Thrissur circle 10, Delhi 174, Maharashtra (a) Aurangabad 168 (b) Mumbai Circle 117, Goa 21, Uttar Pradesh (a) Agra Circle 264 (b) Lucknow Circle 365, Patna 112, Gujarat 202, Uttaranchal 44, Haryana 90, West Bengal 133, Assam 55, Arunachal Pradesh 3, Manipur 1, Meghalaya 8, Tripura 8 and 4 located in the State Nagaland respectively. The 4 (four) monuments/sites in the State of Nagaland are under the jurisdiction of the Archaeological Survey of India (ASI) and for each sites/monuments the Archaeological Survey of India (ASI) has to prepare site plans and heritage by laws, As per provisions of the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010; The present paper therefore examines validity of extension of provisions of the "Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010" enacted by the Union Government of India in the State of Nagaland, a State constituted under special provision (Article 371A) of the Constitution of India.

Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010: An Overview:

- The ASI shall be responsible for the up keep maintenance and management of the protected monuments and sites declared as of National importance under Section -3 and 4.
- In addition to the 100 meters of prohibited area around the site, a minimum area of 200 meters in all directions of the protected sites will be declared regulated (Section-2 (ha) and 20A). The National Monument Authority, constituted by the Central Government (Section-20F) can also consider to extend the extent of limits on the basis of gradation and classification of monuments/archaeological sites and remains [Section 2(I) and 20A & B] for the purpose of construction and no private or public construction in the prohibited area will be allowed except the National monuments/sites declared by the ASI.
- The National Monument Authority will comprise of archeological and heritage experts and will work without any interference from the bureaucracy.
- The permission for renovation and repairing work for the building structure existing prior to 1992 or permission granted by the Archeological Survey of India can only be granted by the Government of India on the recommendation of National Monument Authority (NMA). Any person, who owns any building or structure, which existed in a prohibited area before 16th June, 1992 need to submit application to the competent authority for carrying out such repair or renovation, as the case may be [Section 20C(1)]. The competent authority shall forward the applications so received within 15 days to the NMA to consider and intimate impact of such construction in accordance with heritage bye-laws to be framed for the concerned protected monument or protected area [Section 20D(2)]. The NMA shall intimate within two months after the receipt of the application to the Competent authority along with impact of such construction [Section 20D (4)]. The recommendation of the NMA shall be final [Section 20D(5)]. The constructions carried out by any person without obtaining prior permission will be considered/declared as illegal and not valid.
- The competent authority in consultation with the Indian National Trust for

Art and Cultural Heritage (INTACH) or such other expert bodies, as may be notified by the Central Government, shall prepare heritage bye-Laws in respect of each protected monuments/sites [Section 20E(2)]. The Competent Authority has been authorized to appoint experts or consultants for preparation of detailed site plans and heritage bye-law [Section 20E (4)].

- The heritage bye-laws in respect of each protected monuments/sites shall be laid on the table of each House of the Parliament [Section 20E (6)]. The heritage bye-laws thereafter shall have to be published in the Official Gazette to make them available to public.
- The amended Act, 2010, vide Section 30 has increased the penalty from 3(three) months to 2 (two) years and fine of rupees five thousand to one lakh or both in respect of violation of Sub-Section(I) i.e. destroys, removes, injures, alters, imperils or misuse a protected monuments or being the owner or occupier of a protected monument, contravenes an order made under Sub-Section (i) of Section -9 or under Sub-Section (I) of Section-10 or removes from a protected monument any sculpture, carving, image, bas-relief inscription, or other like object... Similarly for violation of Sub-Section (2) of Section 30 has also been enhanced "Any person who moves any antiquity in contravention of a notification issued under Sub-Section (I) of Section 25 shall be punishable with imprisonment which may extended to 2 (two) years or fine which may extend to one lakh rupees or with both.
- Penalty for unauthorized constructions in the prohibited and regulated area have been prescribed vide Section 30A "Whoever raises, on and after the date on which the Ancient Monuments and Archeological Sites and Remains (Amendment and Validation) Act, 2010, any construction in the prohibited area, shall be punishable with imprisonment not exceeding 2 (two) years or with fine which may extend to one lakh rupees or both." And Section 30 B "Whoever raises, on and after the date on which the Ancient Monuments and Archeological and Remains (Amendment and Validation) Act, 2010, any construction in the regulated area without previous permission of the competent authority or in contravention of the permission granted by the competent authority, shall be punishable with imprisonment nor exceeding 2 (two) years or with fine which may extend to one lakh rupees or both".
- The Director General, Archaeological Survey of India has been empowered to call for information from the local bodies and other authorities for identification of all constructions made on or after the 16th June, 1992 in all prohibited and regulated areas [Section 35B(2)].
- Section 12 states that the permission granted by the Archaeological Survey of India between 16th June, 1992 and enforcement of the Ancient Monuments and Archeological sites and Remains (Amendment and Validation) Act, 2010, for construction or reconstruction etc. except those granted ex-post-facto after completion of the structure or building in the prohibited and regulated areas of the protected Monuments/sites have been held as valid and not challengeable in any court, tribunal or other authority.

Extension of provisions of the enactment Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010 in the State of Nagaland: A Conflict Scenario

The State of Nagaland was created as the Sixteenth State of the Indian Union on December 1, 1963 and enjoys a unique position under Article 371-A of the Constitution of India which provides supremacy to the Naga customary laws and practices over formal laws passed by the Parliament.

In India, we have many Acts which are enacted for conservation of biological diversity such as - Indian Forest Act 1927, Wildlife (Protection) Act, 1972, Forest (Conservation) Act 1980, Protection of Plants varies and Farmers Right Act 2001, Biological Diversity Act, 2002 and The Schedule Tribe and other Forest Dwellers (Recognition of Forest Rights) Act 2006. But their applicability in the State of Nagaland is limited due to constitutional safeguard guaranteed under the Article 371A of the Constitution. However, the Legislative Assembly of

Nagaland, understanding the need to conserve the forest resources and protect the rights and interests of the various tribes/communities and individuals has enacted a series of local Acts/Rules to conserve and protect the forest viz., The Nagaland Forest Act, 1968; the Nagaland Rules for Protection of the Establishment and Control of Forest Villages, 1969; the Nagaland Rules for Protection of Forest from Fire, 1969; the Nagaland Village and Area Council Act, 1970; the Village Development Rules, 1980; the Nagaland Jhumland Act, 1970; the Nagaland Land (Requisition & Acquisition) Act, 1966 and the Nagaland Tree Felling Regulations, 2002.

No doubt, even the Government of India has enacted the Schedule Tribe and other Forest Dwellers (Recognition of Forest Rights) Act, 2006, in order to protect and safeguard the rights of the tribal communities over forest resources. However, even the said Act cannot be extended in the State of Nagaland without complying with the provision of Article 371A of the Constitution of India (for an initial brief view of the same, see Jamir 2010). Moreover, from the provisions of the Schedule Tribe and other Forest Dwellers (Recognition of Forest Rights) Act 2006, what is apparently clear is that the Act is mainly directed against those Schedule Tribe and other forest dwellers who are settled or under occupation of forest areas, owned by the Government and who are deprived of even the basic minimum rights and are almost refugees of the nation. However, due to the specific land holding system in the State of Nagaland, land and its resources belongs to the village/community/clan and individual. The State Government does not own any land except those which has been acquired from the land owners. As the Nagas are the owner and possessor of the land and its resources which includes the forest, the Naga people do not need the protection of right vide provisions of Schedule Tribe and other Forest Dwellers (Recognition of Forest Rights) Act, 2006.

Therefore, before extending any Act, passed by the Government of India in the State of Nagaland be it the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, the Forest (Conservation) Act, 1980, the Biological Diversity Act, 2002 etc., the same has to be tested in the touchstone of Article 371A of the Constitution of India so as to preserve the socio-economic and cultural identity of the Nagas.

Since time immemorial, the socio-economic and cultural life of the Nagas has revolved around the forest and its resources. In fact, it is because of this reason that Article 371A has been incorporated in the Constitution of India so as to protect the socio-economic and cultural rights and interest of the Nagas. Nagaland has diverse culture with each tribe having its own distinct customary practices with regard to the use, ownership and transfer of land and its resources.

Article 371A of the Constitution, confers a special status to the State of Nagaland to the effect that no Act of Parliament in respect of (i) religious and social practices of Nagas; (ii) Naga customary law and procedure; (iii) administration of civil and criminal justice involving decisions according to Naga customary law and (iv) ownership and transfer of land and its resources shall apply to the State of Nagaland unless the Legislative Assembly of Nagaland by a resolution so decides. As per Section 2(d) of the Nagaland Ownership and Transfer of Land and its Resources Act, 1990 (The Nagaland Act No. 1 of 1993), "Land and its resources" means, "advantages derived from the surface of the land and all that is below it and which is valuable or is a source of money or income and includes..."

It is therefore, imperative to examine the applicability of Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, as to whether extension of provisions to protect the present four Monuments: i) Remains of a Fort (Dimapur Ruins), ii) Memorials of Mr. G.H. Damant, Major Cook and Subedar Nurbir Sahi, Khonoma, iii) Stone Cairn to the memory of Mr. Damant, Kohima, and iv) Lt. H. Forbe's Grave, Suchima (Archaeological Survey of India Guwahati Circle) shall defeat the very purpose of incorporating Article 371A in the Constitution of India. As such, it is necessary to discuss some of the relevant provisions of the Act in the touchstone of Article 371A of the Constitution of India.

It is worth to mention that only four monuments of the State of Nagaland had been identified as monuments of national importance where as the neighboring states have 55 monuments of National importance. In matters relating to identification of monuments of National importance, the State of Nagaland could not get much attention till date. Insurgency and difficult terrain might have restricted the visit of the experts in exploring and identifying monuments of National importance in Nagaland. Perhaps, it is because of this reason that there are only 4 (four) monuments in the State identified as monuments of National interest. Once monuments / Sites are enlisted under the Monuments of National importance, the expenditure etc will be borne by the Union Government in the development of site plan and bye-laws (separate for each monuments/sites) and its management as per site plan and bye laws tabled and approved in each House of the Parliament [Section 20E(6)]. The bye laws for four monuments of National importance will be finalized by ASI [Section 20E (2)] and will be tabled in each House of Parliament and same will be implemented in the State of Nagaland. Similarly management Plan of monuments sites will be finalized by the ASI [Section 20E (4)]. The provisions of enactment debar interference of the State Governments in respect of upkeep, maintenance and management of protected monuments/sites of national importance. However by virtue of Article 371 (A) the pro-

vision of the said Act, cannot be extended in the State of Nagaland, unless the Legislative Assembly of Nagaland by a resolution so decide to accept and to extend the said enactment of the Union Government of India in the State. The provisions of enactment states that 100 meters of prohibited area around the monument/site will be demarcated and a minimum area of 200 meters in all directions of the protected sites will be declared regulated. The National Monument Authority, constituted by the Central Government can also consider to extend the extent of limits on the basis of gradation and classification of monuments/archeological sites and remains [Section 2(1) and 20A & B] for the purpose of construction and no private or public construction in the prohibited area will be allowed except those undertaken by the ASI.

Nagaland State has a special status in the Indian Union. Article 371A of the Constitution of India that the customs and tradition of the Naga people is protected and that land ownership continue to remain in the hands of the individuals, clans, communities and villagers. As such the State Government is not the owner of the land and villagers are the undisputed owner of land in the State. Thus, the State Government does not own/possess any land, except those which were handed down by the Britishers when they left and a few areas acquired at later date either by paying land compensation or through donation received for villagers for specific purpose of common interest.

In the backdrop of the unique land ownership in the state of Nagaland, in the event the "Ancient Monuments and Archeological Sites and Remains (Amendment and Validation) Act, 2010" is extended in the state of Nagaland, it will give rise to serious conflict between the administrative machinery and the people residing within the protected and restricted areas. Therefore, National enactment should also incorporate the provisions of the Union Government of India. The people residing within the protected and restricted areas. Implementation of the provisions of the National enactment should also incorporate the provisions of the state enactments to restrict the conflict in application of the provisions of enactment of the Union Government of India.

The provision of Section 35B(2) empowers the Director General, Archaeological Survey of India, to call for information from the local bodies and other authorities for identification of all constructions made on or after the 16th June, 1992 in all prohibited and regulated areas. The provision made binding for local bodies and other authorities to furnish all desired information. States other than Nagaland

Provisions of the Section 20E (6), Section 20E (2) and Section 20E (4) debar the interference of State Government. Examination of the existing provisions in the constitution of India with reference to proprietary rights of Individual, Clan and Communities over land and community resources also in states other than Nagaland reveals that constitution recognizes proprietary rights of Individual, Clan and Communities. Monuments/Sites of national importance will be surveyed by ASI to demarcate Prohibited and Regulated areas (Sections 20A & B: total 300 (three hundred) meters in all direction of Monuments/ Sites). It is important to mention that in many locations human settlements or farming etc may be in vogue. Phukan (2012) is of the view that ASI should take aggressive and affirmative action to stop encroachments near the monuments/sites of national importance. His statement may be partially true. ASI should keep in mind that individual, clan and communities' rights (in majority of the north eastern States) have been recognized by special provisions of the Constitution of India. Even forests and mines are owned by individuals. In many locations, ASI will find difficulty in demarcation of Prohibited and Regulated areas because individuals, community and clans may have proprietary right in the proposed Prohibited and Regulated areas. Section 30A and 30 B mentions that permission of the competent authority is must to erect some structures or use for other purposes. Otherwise severe penalty would be imposed. This will definitely create conflict situation. Section 35B (2) cannot be extended easily. Even concerned state Government can't force the inhabitants to vacate the area coming under Protected and Restricted areas of Monument/Site.

SUGGESTIONS:

Union Government of India should examine the proprietary rights of Individuals, clan and communities of inhabitants of North eastern states, granted under special provisions of the Constitution of India. And provisions should be instituted in the "Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010" to avoid the conflict situation.

- "Private owner" i.e. individuals, clan and communities having proprietary right over land resource within the limit of 300 meters (Prohibited and Regulated Areas) need to be considered/instituted in the Section-2.
- "Joint management" of monuments/sites jointly by ASI and Private owner need to be instituted in the Section-2.
- Below mentioned provisions need to be instituted/considered after Section 20 (A) and 20 (B)
 - i. Joint management of monuments/sites by Agreement.
 - ii. Maintenance of the monuments/sites and payment of expenses incurred by right holders.

- iii. Restriction of owner's rights (Any construction in the Prohibited and Regulated areas).
 - iv. Acquisition of Right (mutual agreement) in the Prohibited and Restricted areas as per provisions of the Land Acquisition Act, 1894 (Act I of 1894)
 - v. Refusal or failure to an agreement
- Designation of an Authority to settle the dispute between ASI and Private owner of land within Restricted and protected areas of monuments/sites of National importance.

DISCUSSION AND CONCLUSION:

With a deep rooted legacy of a colonial past in India, it is doubtful whether the host of legislations enacted by the Archaeological Survey of India will serve the interest of the people of Northeast India. The case of the ancient city of Sisupalgarh, Odisha is a stark reminder of a learning experience where conflicts between local residents who possess the land, the local civic bodies who had no jurisdiction over the site, and the ASI with its stringent laws (see, Mohanty 2012). If at all we envisage in future that such a legislative framework is to come into effect and serve the interest and concern of hill communities where land and its resources are intertwined with the larger cultural identity of the people, there is a need to decolonize the current practice, go beyond academic realm and involve the participation of the local communities who are the custodian of their heritage. Many a times, the State Government points to Article 371A as a prime setback to developmental activities but paradoxically speaking, here is a clear case where it lends a significant bearing in safeguarding the interest of indigenous people, who are the custodian of the heritage, land and its resources. As appropriately pointed out by Rizvi (2006) wherein archaeological practice in India only promotes the colonial frameworks upon which it was established, it is about time that efforts must be made to accommodate and engage local communities in determining what constitutes their heritage and bring out strategies to protect those heritage that wholly constitutes the identity of a particular ethnic community. For a country as large and as culturally diverse as India, there can be no single definition of „national heritage“. A glance at the list of National Protected Monuments (i.e those recognized as being of national importance and under the purview of the Archaeological Survey of India) reveals a serious dearth of representation from living tribal cultures, of vernacular architecture and, indeed of larger cultural landscapes. The nation's heritage must reflect the myriad cultures that constitute Indian heritage (Sharma 2013: 271). In the case of Nagaland, considering the uniqueness of Article 371A in the State, out of the four monuments under the protection of ASI, except for the Dimasa Fort and the Kachari stone monuments in Dimapur where the land directly comes under The Assam Land & Revenue Regulation Act, 1886 (Regulation I of 1886), without the implementation of the ASI Act in Nagaland, it is apparently questionable how the rest of the three monuments/sites in Kohima District was declared as protected monuments since the geographic location of these monuments are found to be beyond the purview of The Assam Land & Revenue Regulation Act.

Analysis presented in the foregoing paragraphs may help the policy and law makers i.e. State Legislature and the stakeholders of the State of Nagaland to examine the crisis situation likely to emerge in near future while implementing the Ancient Monuments and Archaeological Sites and Remains (Amendment and Validation) Act, 2010, in the State of Nagaland. Presently, only four monuments had been kept in the category of monuments of National importance. Impact would increase with increase in number of monuments/sites of national importance in the State of Nagaland.

Land is the most valuable possession of mankind and man has always been envious of its ownership, extent of areas and unlimited right over it where the law recognizes Rights of each stakeholder. Thus, if at all a consensus is reached to implement the list of ASI Acts in Nagaland, prior to its resolution in the Legislative Assembly of Nagaland, the Rights granted to the State of Nagaland vide provisions of Article 371A of the Constitution of India needs to be harmoniously.

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